

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
GUZMAN, : 09-CV-9323
:
Plaintiff, : July 7, 2011
:
v. : 500 Pearl Street
: New York, New York
NEWS CORPORATION, et al., :
:
Defendants. :
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TRANSCRIPT OF CIVIL CAUSE FOR TELEPHONE CONFERENCE
BEFORE THE HONORABLE RONALD L. ELLIS
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff: SHAFFIN ABDUL DATOO, ESQ.

For the Defendants: MARK LERNER, ESQ.
BLYTHE LOVINGER, ESQ.

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1 THE CLERK: Good afternoon. This is Judge Ellis.

2 Could I have your appearances?

3 MR. DATOO: Shaffin Dattoo for plaintiff in Guzman
4 v. NYP Holdings and for the plaintiffs in Fenner Livingston v
5 NYP Holdings.

6 MR. LERNER: For the defendants in both of those
7 cases, Mark Lerner and Blythe Lovinger. Good afternoon, Your
8 Honor.

9 THE COURT: Good afternoon. This is a conference in
10 Guzman v. News Corporation, 09-CV-9323 and Fenner v. News
11 Corporation, 09-CV-9832. It is approximately 5:30 p.m. on
12 July 7th. This conference is a result of discovery disputes
13 the parties are having and the submissions by the parties and
14 a joint submission in each of those cases dated June 30,
15 2011.

16 I have reviewed the submissions by the parties and
17 consistent with the divisions that the parties have had I
18 will discuss the disputes and order. The first dispute
19 concerns the defendant's submission of documents with
20 redacted portions. Specifically, these are documents
21 concerning executive committee agenda, executive committee
22 meetings and notes and emails to Guzman related to the
23 executive committee. The plaintiffs object to the
24 defendant's production of those documents in a redacted form.

25 With respect to the overall question of whether or

1 not the information needs to be produced in non redacted
2 form, the court finds that given the descriptions that the
3 information need not be produced in full but may be redacted
4 because in the description the indication is that the
5 information -- as the information is described the court
6 finds that they are not relevant.

7 The ancillary question is whether or not in any
8 discovery assertion by a party the other side has to accept
9 the assertion by that party that the items are what they say
10 they are. In this regard, I believe that the plaintiff's
11 preferred suggestion would be that the documents be produced
12 for attorney's eyes only and the ultimate suggestion would be
13 that the documents be produced in camera for the court's
14 consideration to determine if the defendant's assertion that
15 the documents do not pertain to the plaintiff then they
16 should not be produced.

17 While my general reaction is that I should not
18 increase my workload unnecessarily -- to the extent that the
19 documents are not relevant it seems to me given the history
20 of the parties in this case that more directly it probably
21 makes sense for me to go ahead and see the documents in the
22 first instance so that I won't have to deal with the parties'
23 disagreement about whether or not they pertain to the
24 plaintiffs in these cases.

25 So, in that regard, Mr. Lerner, at least I need

1 to -- I don't know the extent of the documents that we're
2 talking about and I don't know -- so I certainly don't want
3 to see 100,000 documents but I would certainly like to see a
4 sample of redacted documents. Can you, first of all, tell me
5 how extensive this production is that we're talking about?

6 MR. LERNER: Yes, Your Honor. The redacted
7 documents are pretty easy to go through in probably -- it's
8 probably a quarter of an inch thick. The unredacted
9 documents is a stack about an inch thick.

10 THE COURT: Are they -- are they divided in time or
11 how are they divided?

12 MR. LERNER: Yes. A typical package of executive
13 committee minutes is for a particular meeting on a particular
14 day and the minutes themselves which is all Your Honor --
15 well, the minutes themselves typically stand the first --
16 anywhere from three to half a dozen pages, sometimes less.
17 Then sometimes there are Powerpoint attachments which I think
18 Your Honor could review very quickly. So I think this is
19 a -- I think it's -- you would find this to be a manageable
20 undertaking. The number of days for which minutes have been
21 produced is probably about a dozen.

22 THE COURT: Certainly as a matter of full disclosure
23 I think more accurately to say that it would be manageable
24 for my law clerk.

25 MR. LERNER: Understood.

1 THE COURT: So that's the resolution of that. As I
2 said, as a legal matter as I see the descriptions and if they
3 are what the defendants say you can certainly redact
4 information, the information that's indicated.

5 Now, with respect to the next category having to do
6 with the document -- I guess plaintiff's first set of
7 document requests. This has to do with request by reporters
8 or editors for approval prior to writing articles. If I
9 understood correctly part of the issue is that the term --
10 well, first of all, it would seem to me that we would be
11 looking for people who were similarly situated, and I think
12 the complicating fact here is that if I understand the
13 submission from the defendant the term editor is one of those
14 terms which can run the gamut from somebody who's one level
15 to somebody who is at a very low level.

16 So I don't know that the parties could even agree
17 as to who would be similarly situated to either Guzman or
18 Fenner. You may weigh in on that one.

19 MR. DATOO: Your Honor, this is Shaffin Dattoo for
20 the plaintiff. I believe Ms. Guzman's official title was
21 associate editor even though she I believe was the editor of
22 Tempo magazine and edited certain other sections. Her job
23 title was associate editor. So I would suggest, respectfully
24 suggest that those who would be similarly situated to her
25 were those that carried the title of associate editor and

1 editor, not anyone who I guess carried a title lower in the
2 hierarchy as editor.

3 THE COURT: Mr. Lerner, I'm not sure that narrows
4 the issue that you raise as to the number of people who would
5 be covered with that designation. In fact, maybe that
6 includes it if I understood it correctly.

7 MR. LERNER: It's a very large number of some people
8 with very wide ranging responsibilities.

9 THE COURT: Then this may come down to the question
10 of whether or not this issue as raised by the plaintiff in
11 balancing the portion of discovery versus whether or not the
12 issue can be reasonably addressed through other than the
13 document requests is -- in balancing that what seems to be
14 appropriate. I understand from your submission that if we
15 use the term reporters and editors there would be like
16 hundreds of thousands of emails. If we took out reporters
17 and just limited it to editors or associate editors, do you
18 have any idea what numbers that would be?

19 MR. LERNER: The number of emails to be searched
20 would still be easily in the hundreds of thousands. A typical
21 email box with the New York Post can easily number in the
22 thousands of emails. Sandra Guzman's email box had 15,000
23 emails in it.

24 MR. DATOO: I'm sorry. This is -- we're only
25 asking for the period from February '09 through September

1 '09. I think that's an eight-month period.

2 MS. LOVINGER: Your Honor, this is Blythe Lovinger
3 speaking. I recently spoke with Ms. Guzman's former
4 supervisor, Joe Rabinowitz, about this very issue. Of course
5 we had discussed it previously but I revisited it with him
6 and he told me that at all times Ms. Guzman and the other
7 associate editors and the others who report to him who may or
8 may not have the position of associate editor only needs to
9 seek approval prior to writing articles when there will be
10 some expense involved through writing the article, be it
11 travel expense or renting out some space or something that
12 would -- something that would cost the Post money.

13 So that's the only time when Sandra Guzman -- this
14 is what he told me -- or anyone else reporting to him needed
15 to seek approval. He said that he wouldn't be aware of what
16 other reporters and editors needed to do to seek approval if
17 they needed to seek approval prior to writing articles but he
18 only knows what the people who reported to him and who still
19 report to him are required to do.

20 So I think the relevant inquiry would really be
21 people who report to Joe Rabinowitz because I don't think
22 that there's a consistent policy necessarily across the
23 board.

24 THE COURT: Mr. Datoo, to the extent that the issue
25 has been framed that way, I agree that part -- as I

1 understand the complaint that Ms. Guzman raised, that is that
2 her being required to seek approval as being a change in her
3 status unless the evidence is clear that the application of
4 the policy of approval are either uniform or done by the same
5 person this does seem to me that you're missing a step in
6 determining whether or not the inquiry should go forward.
7 That is if we're talking about a disparate treatment of Ms.
8 Guzman and we're not talking about a uniform policy among
9 supervisors then the relevant inquiry is with Mr. Rabinowitz
10 and how he's done things and that would be the focus.

11 MR. DATOO: I would agree with that, Your Honor. I
12 think that's an appropriate middle ground unless depositions
13 reveal otherwise. I'm [inaudible] editors and associate
14 editors that reported to Mr. Rabinowitz for that eight-month
15 period.

16 THE COURT: How would that -- I guess, Ms. Lovinger,
17 this is Mr. Datto saying that well, if you're telling me that
18 Mr. Rabinowitz only did this in certain circumstances and
19 therefore it undermined our assertion that there's some
20 disparate treatment with respect to Ms. Guzman we're allowed
21 to test that and see how -- whether or not your assertion is
22 correct that it only bears some expense and at least we can
23 explore -- at least under Rule 26 we're entitled to see if
24 that is a valid distinction.

25 MS. LOVINGER: I agree that that -- that certainly

1 makes sense in terms of narrowing the inquiry. I'm not sure
2 what documents there are. In an ideal world everyone would
3 make the request in email and no one would have deleted any
4 emails but we're talking about a period from February 2009
5 through her termination in September 2009. When this
6 complaint was filed we of course advised and instructed
7 everyone to retain all emails relating to Sandra Guzman and
8 the allegations in the complaint but if others who are not
9 involved or mentioned in the complaint were in this case then
10 emails to Joe Rabinowitz they may not have been retained
11 because it's now been two years.

12 So certainly we can go back and look. So what the
13 search would really entail is looking at all of the
14 individuals who Joe Rabinowitz supervised from that -- at
15 that creative time and go through every email. I'm not sure
16 what the search terms would be but we could certainly give it
17 some more thought and then discuss it with Mr. Datoo and run
18 the searches but --

19 THE COURT: How many people did he supervise? I
20 have really no idea what --

21 MS. LOVINGER: It would be -- I think it would be
22 less than five people.

23 THE COURT: Well, it does seem to me that even as
24 the inquiry is framed the policy that Mr. Rabinowitz -- it is
25 Rabinowitz; right?

1 MS. LOVINGER: Correct, yes.

2 THE COURT: If his policy was uniform and it was
3 based upon whether or not there was expense to the Post that
4 is an issue which directly addresses the claim that Ms.
5 Guzman has. So why don't you -- well, first of all, discuss
6 it with Mr. Datto. Find out what it would entail and if that
7 compromise works then we don't have to resort to Rule 1 to
8 determine whether or not the benefit is balanced by the cost
9 of doing the search.

10 MS. LOVINGER: We'll do that.

11 THE COURT: Now, there are a series of questions. I
12 will refer to them as the cartoon discovery and ultimately
13 the question is what's the -- how does the chimpanzee cartoon
14 fit into the claims that are in the cases that are before the
15 court? I know it's been raised several times in the Guzman
16 case. So the question is whether or not the -- what the
17 plaintiff believes that they can get the chimpanzee cartoon
18 which includes the communications concerning it, the -- that
19 is concerning its development, its production, the complaint
20 surrounding it, how that was handled, Mr. Murdoch's
21 [inaudible] and disclaimers, how that relates to plaintiff's
22 claim.

23 The bottom line is that I do not find that the
24 chimpanzee cartoon offensive though it may be fits within the
25 kind of discovery that would be relevant to the claims that

1 Ms. Guzman has raised either in terms of a hostile work
2 environment or retaliation. That is, I see the cartoon as
3 not relevant to the question of the environment that was
4 created by the News Corporation. To the extent that the
5 plaintiff is arguing that that says something about the
6 decision makers who are involved with her decision it's my
7 understanding that to the extent that there was
8 communications related to those individuals that has been
9 produced. Am I wrong on that?

10 MR. DATOO: Your Honor, I think the defendants are
11 in the process of producing those documents. Am I correct?

12 MR. LERNER: Yes. We did agree in our conducting
13 searches for documents among the top personnel which are
14 indicated in the joint letter that covered the period after
15 the cartoon was published to see if there are emails that
16 have to do with how are we going to respond to employee's
17 complaints about the cartoon. That was something that we
18 agreed that we would search for and were in the process of
19 looking for those.

20 We are not aware of any documents along those lines
21 -- we're not aware of any documents existing right now but I
22 can tell you that we're not aware of any documents that are
23 non emails. In other words, there was no policy or corporate
24 documents drafted to deal with that. If there were we would
25 produce it.

1 THE COURT: Is there anything, for example -- I
2 think the name I kept seeing is Cole Allan.

3 MR. LERNER: Yes, Cole Allan is the editor in chief.

4 THE COURT: I don't know whether he would have
5 either commented on or written anything about the chimpanzee
6 cartoon but to the extent that he would have commented, for
7 example, his motivation I think has been put in to question
8 because he was the decision maker -- he was a decision maker.
9 I think he was a decision maker on the cartoon and with
10 respect to Ms. Guzman.

11 MR. LERNER: Yes, that is -- that's right. He was
12 certainly the decision maker on the publication of the
13 cartoon.

14 THE COURT: I don't know how much more exploring one
15 needs to do. Has Allan been deposed?

16 MR. DATOO: No depositions have taken place yet,
17 Your Honor.

18 THE COURT: If there are any documents that relate
19 to specifically Cole Allan -- I'm not sure whether that would
20 be before or after the cartoon but that does seem to me to be
21 a specific person whose actions and motivations have been put
22 into question.

23 MR. LERNER: We did include him on the list of the
24 same [inaudible] personnel that we would search.

25 THE COURT: Mr. Dattoo, is there -- did you take

1 issue with the list of senior personnel for example?

2 MR. DATOO: Your Honor, I think it was -- the
3 defendants identified several people that were involved in
4 Ms. Guzman's [inaudible] to terminate Ms. Guzman's
5 employment. I'm just trying to pull up the interrogatories
6 right now. I was [inaudible] that the production be expanded
7 to include all those people that defendants identified in --

8 THE COURT: Because on the joint letter you say that
9 you propose to produce documents concerning communications
10 among these high level persons that concern how the Post
11 would respond to Ms. Guzman or to employees of the Post
12 regarding concerns expressed about the cartoon. Is that what
13 you were planning to --

14 MR. DATOO: Yes, that's correct, Your Honor.

15 THE COURT: As far as I'm concerned, that seems to
16 be an appropriate response although I said I think in general
17 the question of the cartoon is -- it is not directly on point
18 but the response to the cartoon I think becomes important
19 because of the individuals who are doing the response and how
20 they feel about the response and that issue.

21 MR. DATOO: Your Honor, I just think that one of the
22 interrogatories -- specifically it's defendant's responses to
23 plaintiff's first set of interrogatories and with specific
24 reference to Interrogatory Number 3, we asked that defendants
25 identify each and every person that had knowledge relating to

1 the decision to terminate Ms. Guzman's employment. A few
2 people -- the people that were identified were Cole Allan and
3 Jennifer Jenn. There were additional people. Those two
4 people, Cole Allan and Jennifer Jenn are included in the list
5 of people that defendants -- who defendants are going to
6 search. There were two other people that I don't see on this
7 list who defendants are going to search that were like I said
8 knowledge of the decision to terminate Ms. Guzman and that
9 was Paul Carlucci [Ph.] and Less Gutstein [Ph.] and I'm going
10 to request that those people be added to the list.
11 Especially Mr. Gutstein who I believe was I think Ms. Guzman
12 reported to him or was under him for a while near the end
13 with respect to Capital Magazine.

14 THE COURT: Mr. Lerner, just in conjunction of that
15 interrogatory response and this proposed search, do you have
16 a -- just a response, what's your position?

17 MR. LERNER: I think we can include Mr. Carlucci and
18 Mr. Gutstein in that search. Mr. Carlucci was never a part
19 of -- I don't want to say never but was not -- typically not
20 a part of the plaintiff's requests in the past so that's why
21 it wasn't included. He is the publisher of the New York Post
22 but we can include him.

23 THE COURT: So to the extent that these are
24 individuals who had knowledge of the reasons for Ms. Guzman's
25 termination it seems reasonable to include them in these -- I

1 understand that none of the searches may produce anything but
2 if the inquiry has -- certainly the state of mind and the
3 thinking of anyone who could be implicated in the decision to
4 terminate Ms. Guzman I think is fair game for discovery. But
5 other than that I think the response that you proposed seems
6 appropriate.

7 MR. LERNER: We'll complete our search and we'll
8 include the additional individuals.

9 THE COURT: I think it goes without saying that to
10 the extent that there were questions concerning Mr. Murdoch I
11 did not see a connection there. The discovery requests
12 concerning Mr. Murdoch I think failed to demonstrate to me a
13 legitimate failure of inquiry.

14 MR. DATOO: Thank you, Your Honor.

15 THE COURT: Now, with respect to the EEO reports.
16 There was a -- the defendants indicated that there was a
17 prior ruling I had on EEO reports. I have to admit I'm not
18 sure which of my rulings we're talking about. Not that I
19 wouldn't be consistent with them. I just don't know what
20 we're talking about.

21 MR. LERNER: Not specifically on EEO reports but in
22 Your Honor's decision last fall there had been a -- one of
23 the matters before the court was a request for some large
24 body of material that presumably the plaintiffs could use
25 [inaudible] for some sort of statistical basis. What Your

1 Honor stated in the order which is dated on October 20th of
2 2010 is that -- it stated in large part Ms. Guzman's request
3 is premature, the record is not clear as to the specific
4 reason for her termination, the relevance of complaints by
5 other employees is therefore questionable on any question of
6 pretext. The paragraph before that had indicated that one of
7 the things that you were focusing on was the large body of
8 material and potential for some sort of statistical analysis.
9 So that was the context in which we referred to the prior
10 order.

11 Then Judge Jones in her affirmance actually
12 referenced your order. She said additionally Judge Ellis
13 specifically stated on the record that statistical evidence
14 of defendant's employment practices could be relevant to the
15 plaintiff's disparate treatment claim. However, it explains
16 that a request for statistical evidence information is
17 different than plaintiff's broad request for all records of
18 individual complaints of discrimination by any employee and
19 that it was premature.

20 So our position on this is that what we have is a
21 very -- without really any basis in the facts of the case a
22 demand for the most -- the broadest, actually the broadest
23 categories of statistical information. It's actually not
24 even asking for statistical information. It's asking for the
25 raw data in 21 categories across hundreds of employees and

1 many years. In fact, with respect to Ms. Livingston because
2 she was employed at the Post since 1997 the plaintiffs have
3 requested something like 20 categories of information about
4 every reporter at the New York Post since 1997. These are
5 not tailored crafted directed document requests and for all
6 the reasons we stated we really think it's very burdensome
7 and not adequately supported yet as a request.

8 THE COURT: Mr. Dato, let me just say that with
9 respect to broad EEO data I think the underpinnings of the
10 relevance of data is that if you show that decision makers
11 have made decisions which resulted in certain kinds of
12 skewing of the data then that can have a probative value.
13 That means that if you just look at just raw numbers for
14 example it would be important to show that somebody that you
15 claim is discriminating doesn't hire anybody of a certain
16 kind and therefore as you look at the broad numbers there's a
17 disparity that by implication calls into question that they
18 might make otherwise. But I think the underpinnings of that
19 and in all disparate treatment cases that there had to be a
20 tie in to the people who you're claiming are decision makers.

21 Now, I don't know that with respect to the EEO data
22 that we're talking about that the individuals who have been
23 identified as decision makers with respect to Ms. Guzman
24 would also be the people who would be implicated in any
25 statistical disparity that you might show if you got the

1 information that you're requesting if you understand what I'm
2 saying.

3 MR. DATOO: I think I do, Your Honor. I do think
4 even for my own sanity that [inaudible] should be narrowed
5 because what we're essentially trying to figure out are who
6 are Ms. Guzman's comparators. We can't do that without
7 knowing who worked there and whether they matched any of Ms.
8 Guzman's protected characteristics. That's partly why we
9 would like to [inaudible] report as well. I don't think with
10 respect to Ms. Guzman reporters would be considered her
11 comparators. It would be editors and it's sort of limiting
12 it to Mr. Rabinowitz. I think it's a little bit beyond
13 because Mr. Allan who was involved in the decision -- in
14 fact, I think he made the decision to terminate.

15 So in this case we're requesting a little bit of a
16 broader [inaudible] of employees so we can just figure out
17 whether she was treated differently than similarly situated
18 people.

19 THE COURT: I would suggest this then. Ask the
20 question you want to ask and don't ask for this EEO data. If
21 what you just described is what you want to ask you can ask
22 the defendant to identify the people who are in the category
23 of editors or assistant editors for a certain period of time
24 that would be comparable to Ms. Guzman. If between 2003 and
25 2009 there were 20 people who were editors -- maybe those

1 people could be identified but this idea of broad statistical
2 data seems to me to be making it less likely that you
3 identify comparators than if you just ask for comparators.

4 MR. DATOO: Okay. So we'll narrow I guess Requests
5 Number 1, 3 and 7. I don't know what kind of data that the
6 defendants have. One of the reasons why we want to
7 [inaudible] reports is so we can match up in case the
8 defendants [inaudible] what kind of data they have but if
9 they don't know what race or what gender or what national
10 origin or what color some of these people may be.

11 THE COURT: Well, that -- let's start out with names
12 and identifying people.

13 MR. DATOO: Okay.

14 THE COURT: I suggest to you that identifying people
15 by race and gender won't be as difficult as all that once you
16 know who they are.

17 MR. DATOO: Okay. That's perfectly fine with
18 plaintiffs, Your Honor.

19 THE COURT: Mr. Lerner.

20 MR. LERNER: We'll --

21 THE COURT: You want to see what it comes up with.

22 MR. LERNER: I do, yes.

23 THE COURT: But you understand that I agree with him
24 if he wants comparators whether or not the two of you agree
25 on what are comparators may depend on some discussion that

1 the two of you have but certainly I don't think raw
2 statistical data is the way to go in terms of seeing who's
3 comparable to Ms. Guzman and how they were treated.

4 MR. LERNER: We'll see what the requests we receive
5 is and we'll work with Mr. Datoo to see if we can come to an
6 agreement.

7 MS. LOVINGER: This is Ms. Lovinger. If I can just
8 clarify something for the record. I'm looking at the
9 interrogatory answers and there was one interrogatory that
10 asked defendants to identify each and every person who has
11 knowledge in any way relating to the decision to terminate
12 Ms. Guzman's employment with defendants. An answer was
13 provided and it was defendants state that Paul [inaudible],
14 Cole Allan, Less Goodstein and Jennifer Jenn had knowledge
15 relating to the decision to terminate plaintiff's employment,
16 and this may not be a major point but because we're on the
17 record and we're discussing it I just want to put it out
18 there that it was not stated that those individuals made the
19 decision to terminate plaintiff's employment.

20 MR. DATOO: That's what we said, Blythe.

21 MS. LOVINGER: Okay. Because I was surprised
22 because I thought that you said that they actually --

23 MR. DATOO: No, no. [inaudible] interrogatory as it
24 was.

25 MS. LOVINGER: I'm sorry. I apologize then.

1 THE COURT: Actually I didn't understand it to be
2 that they were decision makers and I did see the question as
3 a broad question but it never hurts to clarify. So don't
4 worry about that.

5 MS. LOVINGER: Thank you, Your Honor.

6 THE COURT: As to Guzman, I think that covers the
7 questions that the plaintiffs had with the defendants.

8 MR. LERNER: Your Honor, if I may.

9 THE COURT: Oh, I'm sorry, the profit and loss
10 statements.

11 MR. LERNER: Yes.

12 THE COURT: I guess the issue here is Tempo was a
13 special section and at least from the defendant's point of
14 view that there are no comparators at Tempo. Is that
15 correct?

16 MR. LERNER: That's correct. We actually -- yes.
17 Tempo was the only monthly section that was a special pullout
18 section. It had its own dedicated editor and it was closed.
19 There is really no other section that fits that description
20 that was monthly pullout and closed. The closest thing, and
21 this is -- and we did provide information, is that there was
22 a weekly called Page Six Magazine which went from being a
23 weekly to a quarterly and the Post laid off almost the entire
24 staff which was several dozen people. It was a big operation
25 and literally a magazine produced every week and there were a

1 couple of dozen, maybe more people, and those people were
2 laid off. We supplied a document reflecting the names, dates
3 of employment, date of termination and other information
4 about all of those individuals from Page Six Magazine but --
5 as well as what happened with the editor in chief of that
6 magazine, Margie Conklin. She was the closest thing that we
7 could envision as a comparator. She was retained by the Post
8 after the Page Six went to a quarterly and I understand that
9 defendants -- plaintiffs may wish to argue that the retention
10 is probative of something. We have a response but because we
11 understood plaintiffs may want to make that argument we
12 supplied her employment agreement and other -- I guess some
13 other information.

14 We have not supplied -- we've objected to producing
15 P&Ls which show what sort of expenses and revenues are
16 generated by the special sections and we just -- it's been
17 our position that the data is too far afield both based on
18 the fact that there are -- most of these sections are not
19 comparable at all and what the probative value of that
20 information would be. There is no dispute that Tempo was
21 closed in September of 2009. It seems like plaintiff may
22 want to argue that the Post should have closed other sections
23 if the P&Ls show that they lost money or were losing money at
24 one point in time. We respectfully submit that that's not the
25 question. There's no dispute Tempo was closed. The question

1 is was -- should Ms. Guzman's employment have been retained
2 or was it terminated for improper discriminatory reasons. So
3 we feel the P&Ls for other special sections are not relevant
4 to that.

5 THE COURT: First of all, let me ask this. I recall
6 that earlier the question had come up and I had advised the
7 parties to tie this down but is -- there was a specific
8 question asked I assume as to why Ms. Guzman was terminated
9 and then there was a specific answer given. Did one of the
10 answers have to do with Tempo being closed or being
11 financially -- what were the specific reasons that were given
12 for Ms. Guzman's termination?

13 MR. LERNER: There were a variety of reasons and --
14 but certainly the closing of Tempo which was -- which she was
15 hired, the job she was hired in 2003 to perform and which she
16 performed, the closing of Tempo was a primary factor in her
17 termination.

18 THE COURT: So that to the extent that there were
19 other sections that were closed even though as you frame the
20 issue it's not whether or not the section was closed or
21 whether or not the individual was retained. Clearly,
22 however, it might lead to discoverable evidence to find out
23 when other sections were closed to explore what happened to
24 the individuals who were associated with that section.

25 So to the extent that there are comparable sections

1 information concerning those that were deemed not appropriate
2 to continue are relevant under Rule 26. I'm not sure that
3 strictly speaking from a newspaper that's a P&L decision all
4 the time.

5 MR. LERNER: It certainly is not.

6 MR. DATOO: Your Honor, with respect to Tempo, what
7 the defendants produced during discovery was I believe
8 [inaudible] revenue and I think that's how -- I believe
9 that's how they made the decision that Tempo was losing money
10 but there was some way the defendants gauged how Tempo was
11 doing financially. Whether it's a P&L statement or whatever
12 else they call it I think those are the documents that would
13 be relevant here to determine how a special section was doing
14 financially.

15 THE COURT: Which still [inaudible] to the ultimate
16 question of what's an appropriate comparator.

17 MR. DATOO: Your Honor, I understand defendant's
18 point that Page Six won't be the closest special section to
19 Tempo but the New York Post had several other sections. I'm
20 not quite sure if they came out once a year or twice a year
21 but I think they had weekly publications. I think Travel
22 Tuesday --

23 [Side B of tape.]

24 MR. DATOO: -- but these weekly sections are the
25 same as the Page Six Magazine which was weekly for a while

1 and then it became quarterly. I [inaudible] these weekly
2 sections would be [inaudible] comparators.

3 MR. LERNER: This is Mr. Lerner. I think if the
4 sections are not closed we don't really have any basis for
5 comparison to what happened to Ms. Guzman when Tempo was sent
6 down. We can inquire, Your Honor, as to in addition --
7 whether in addition to Page Six which wasn't actually closed,
8 it went from weekly to quarterly, whether or not any of their
9 special sections that were regularly published were closed
10 and if they had a dedicated editor that was -- what happened
11 with that editor.

12 THE COURT: Well, from my point of view that might
13 be over inclusive but I think it's a better formulation of
14 what would be an appropriate inquiry. Because this really is
15 a question of whether or not the determination was I guess
16 pretextual and therefore whether or not if a section is
17 closed and what happens to the personnel who were associated
18 with it.

19 So as Mr. Lerner describes the issue if there are
20 others besides Page Six where the section was illuminated I
21 think that's a fair area of inquiry because I think that's
22 the comparison that we're talking about.

23 MR. DATOO: Your Honor, I think one of the other
24 issues in this case is that if the sections were losing money
25 or not generating ad revenue Tempo was closed for that reason

1 apparently. We also want to inquire into these other
2 sections, comparable sections whether they were losing money
3 and if they were whether they were closed or not and if they
4 weren't closed we want to inquire into why probably at
5 deposition.

6 THE COURT: Right. I understand what you're saying
7 but there are two problems. One is I think ultimately the
8 question of what's similarly situated you haven't
9 demonstrated to me just because something is a special
10 section it is comparable to Tempo which seems frankly to
11 be -- I'm not even sure they're special sections in and of
12 themselves or comparable to each other. So I think even the
13 concession that Page Six might be comparable is a concession
14 that I'm not so sure that is compelled by the facts.

15 So since special sections are called special I'm
16 sure for a particular reason some of them regardless of what
17 revenue they pull in they're not going to be terminated for
18 different reasons. If you have -- if you want to explore
19 with an appropriate party why or what considerations go into
20 the closing of a section I mean it could be ad revenue, it
21 could be other things. I'd like to hear for example why one
22 might not close a section that is losing money. It happens
23 in industries. I don't doubt that it happens in this
24 industry but there -- unless you have evidence that this is
25 an if and only if situation, that is you closed if you're not

1 profitable and only if you're not profitable then I think the
2 exploration of profit and loss is not sufficiently probative
3 to inquire to comparison of things which don't seem to
4 actually be comparable.

5 MR. DATOO: Your Honor, I think this will give us a
6 basis to explore at a deposition so we would know which
7 sections are -- if any of them are losing money then we can
8 present the witness with the name of the section and if it
9 was losing money we could ask them what considerations go
10 into closing these special sections and why wasn't this one
11 closed, why wasn't that one closed, why was this one closed,
12 things of that nature.

13 THE COURT: But let me back up a minute. If that's
14 what you need for a deposition you don't need profit and loss
15 statements. You just need to ask the defendants which
16 special sections have lost money over whatever period of time
17 you want to identify.

18 MR. DATOO: So perhaps fashion that as an
19 interrogatory to make it -- I guess it would make it easier
20 on both parties.

21 THE COURT: Yes, and that therefore you could say --
22 what I'm saying is there's a less intrusive and less broad
23 inquiry if all you want to know is did the section that was
24 donated Sports Legends ever lost money so that you could ask
25 somebody why Sports Legends wasn't closed down but you don't

1 need to have quarterly, annual monthly profit losses to ask
2 somebody that question. You just need somebody to identify
3 which special section may have lost money at a particular
4 time in history.

5 MR. DATOO: Your Honor, maybe that's not all I want
6 then. I will -- I understand --

7 THE COURT: I understand that's not all you want but
8 I think we're talking about being hampered at a deposition.

9 MR. DATOO: Correct.

10 THE COURT: But if you -- if I were -- if I were
11 trying to find out which law clerks didn't get terminated for
12 giving me the wrong result I don't need to get a long
13 inquiry. I just need to find out which ones have given me
14 the wrong result and then I could ask why wasn't that person
15 terminated.

16 MR. DATOO: I think I will serve a new interrogatory
17 then that will cover I guess the issue I just raised but like
18 I said I'm happy with what you just ordered.

19 MR. LERNER: The one area where I think -- I hope
20 don't want to get lost in this thread is the issue of
21 comparison or comparators and we've got as Your Honor said
22 special means special. Each one is different. Some are
23 pullout. Some run -- some are a few pages in the newspaper.
24 Some are handed out at parades as part of a newspaper. Each
25 one is unique and they also serve different promotional

1 purposes for the paper. It may be that a special section is
2 offered because it generates new visibility for the New York
3 Post among certain group of readers and that there may be --

4 THE COURT: Mr. Lerner, I don't disagree with you.
5 In fact, I think you make a good argument on that score as to
6 them being special. As to the discovery issue, I think
7 what's clear is that the plaintiff's request is too broad
8 based upon the evidence that they brought to bear and if they
9 have some question as to whether or not there's some
10 disparate treatment in terms of how Tempo was created they
11 obviously have a two-fold pass. One is they have to -- they
12 ultimately would have to prove that any special section was
13 comparable to Tempo and they can do whatever discovery they
14 want in that regard and second, they'd have to prove that
15 that section was treated differently from Tempo.

16 If they think that had to do with some financial
17 issue, if they want to make the assertion that a particular
18 section was not profitable and therefore should have been
19 terminated like Tempo if that was the reason Tempo was
20 terminated that may not ultimately be a viable argument but
21 right now it seems to me all they really are entitled to is
22 the information about which sections fit that description and
23 that's not a burdensome inquiry and I don't think it's
24 intrusive. I think the profit and loss statements would be
25 intrusive based upon where we are now.

1 But if one of those inserts lost money and it
2 only -- and it lost money for one quarter but -- like I said,
3 there could be lots of reasons why you would want to keep
4 something that wasn't profitable. In any case, I have
5 interns. I keep them there. They're not profitable but
6 they've very valuable.

7 MS. LOVINGER: Your Honor, this is Blythe Lovinger.
8 I'm just -- just to be clear, are we now engaging in
9 discovery with respect to the special sections really looking
10 to see -- are they looking to see whether or not the closing
11 of Tempo was a discriminatory act or a retaliatory act
12 against Ms. Guzman?

13 THE COURT: I don't know the answer to that
14 question. All I'm saying is that based upon how the
15 plaintiffs have described what they were looking for in this
16 request in terms of trying to show how Ms. Guzman was treated
17 that they've asked a broader inquiry than is warranted at
18 this point.

19 MS. LOVINGER: Right. Your Honor, I understand that
20 but going back to what my colleague Mr. Lerner said earlier
21 isn't the relevant inquiry how an editor was treated after
22 the decision to close this section was made rather than
23 whether or not what special section should have been closed
24 because as Your Honor noted there may be many reasons as to
25 why a section is kept going or --

1 THE COURT: Again, even if you're correct and that's
2 the formulation, I don't know how the plaintiff gets to
3 answer that question until they find out which sections have
4 been closed and what happened before they could even
5 determine whether or not something happened to the people who
6 are associated with that section. So your formulation is you
7 want to see how the people were treated after the closure but
8 I don't think the plaintiffs have enough information now to
9 even make that comparison because they don't know what
10 sections have been closed. I thought that was what we were
11 trying to do.

12 MS. LOVINGER: Okay. I understand. Thank you, Your
13 Honor.

14 THE COURT: Again, the only thing is I wouldn't
15 characterize these as orders in the sense that -- I have not
16 reformulated the questions so I don't know what ultimately
17 plaintiff is going to come up with but as I understand the
18 inquiry if it's limited to identifying sections then you can
19 anticipate that I'll look more favorably upon it but I see
20 need to see the formulation.

21 That brings us to the defendant's claims about
22 deficiencies of the plaintiff in Guzman. How does that stand
23 right now?

24 MR. DATOO: I think that concludes the issue in the
25 Guzman matter.

1 MR. LERNER: I understand, Shaffin, that the
2 Magistrate Judge is asking about defendant's deficiency
3 claims.

4 MR. DATOO: Yes, sorry.

5 THE COURT: Yes, that's what I'm asking about.

6 MR. DATOO: There were no -- we have no issues with
7 respect to the issues raised in defendant's letters. I think
8 most -- I think actually all of them had to do with updating
9 certain production and following up on documents we agreed to
10 produce. We have no -- plaintiff takes no issue with any of
11 those points phrased in defendant's letters.

12 THE COURT: You mean defendants take no issue.

13 MR. DATOO: I'm sorry. I think we're getting
14 confused. Are we talking about defendant's --

15 THE COURT: Right. You said plaintiffs take no
16 issue with the way it stands now. You meant defendants take
17 no issue. You're not talking about deficiencies in
18 plaintiff's production, are you?

19 MR. DATOO: No. Yes, that's what I thought we were
20 talking about now, that we -- I'm sorry, Your Honor. I think
21 I'm just getting confused because it's late in the day for
22 me.

23 THE COURT: I think sometimes you say defendant when
24 you mean plaintiff.

25 MR. DATOO: Your Honor, in all honesty I was

1 representing defendants for ten-and-a-half years and
2 [inaudible] unintentionally.

3 THE COURT: But basically you're saying that right
4 now the defendants have -- they have no quarrel with the way
5 plaintiff's production stands right now.

6 MR. DATOO: [inaudible] be the one that --

7 MR. LERNER: As Your Honor -- the bottom line on
8 that is that we notified them of what we believed to be
9 deficiencies. The plaintiffs have said we don't take issue
10 with what you've told us about. We have some updating to do
11 and we take them at their word they're going to do that and
12 that's where it stands.

13 THE COURT: Then maybe it was me who is wrong on
14 that. Basically you're saying that the plaintiffs don't
15 contest the things that you've complained about.

16 MR. LERNER: Right.

17 MR. DATOO: Correct, Your Honor.

18 THE COURT: But the problem is to supplement.

19 MR. LERNER: Yes, Your Honor.

20 THE COURT: I think you may not have misspoken.
21 It's just that I was thinking of it a different way when you
22 said who's not taking issue. So maybe it's not so late as
23 you think.

24 Now, with respect to Fenner, I don't know what
25 issues are unique that wouldn't be covered by what I've said

1 in Guzman. Let me check.

2 [Pause in proceedings.]

3 THE COURT: Much of what I said could be transposed
4 to Fenner with adjustments for the different requests that
5 are in Fenner but I want to make sure that we've covered all
6 of the issues that might be unique in Fenner. For example,
7 to the extent that Fenner raises a question about redaction
8 it seems to me that I would make the same ruling that the
9 information seemed to be appropriately redacted as described
10 but that to the extent that the plaintiff would have the
11 right to question the -- what the defendants did in
12 redactions will take that responsibility on here, and that's
13 the royal we.

14 MR. LERNER: I don't think it's going to be
15 burdensome on anybody in Chambers.

16 THE COURT: With respect to the cartoon the --
17 there's a question in Fenner concerning a request for a
18 photographer.

19 MR. LERNER: There are no documents responsive to
20 that request.

21 THE COURT: Is there a verified or an affidavit to
22 the effect that there are no responsive documents?

23 MR. LERNER: We haven't supplied an affidavit.

24 THE COURT: That's what I would generally require
25 under those circumstances if somebody says they have no

1 documents.

2 MR. LERNER: We will do that.

3 THE COURT: With a person who has specific knowledge
4 of who was involved in the determination that there were no
5 documents.

6 MR. LERNER: Okay. We've actually been in touch
7 with that person recently to verify that and we can provide
8 that affidavit.

9 THE COURT: Similarly with respect to the cartoon
10 defendants say that they have produced the documents
11 regarding the cartoon that relate to Fenner and Livingston
12 and have agreed to search for documents that relate to how
13 the Post responded to employee concerns in the aftermath of
14 the publication of the cartoon.

15 MR. LERNER: Right. Yes, Your Honor. I think that
16 this was analogous to the Guzman case.

17 THE COURT: That seems sufficient to me.

18 MR. DATOO: That's fine, Your Honor.

19 THE COURT: Now, the plaintiff wants to -- I guess
20 Interrogatory 18, identify each employee at the company who
21 complained in any way about the chimpanzee cartoon published
22 in the Post.

23 MR. LERNER: Your Honor, we think that your prior
24 ruling covers this request.

25 THE COURT: I'm not -- I don't know whether or not

1 it covers it but I would deny the plaintiff's request with
2 regard to complaints by other employees about the cartoon as
3 relevant to the hostile work environment. I know we had had a
4 back and forth about subjective/objective. So I don't know
5 that this specifically is covered by -- I apparently have
6 come to the same conclusion.

7 The next one concerns documents 11 and 12. This
8 has to do with performance evaluations.

9 MR. DATOO: Yes. This one is unique to the Fenner
10 and Livingston case.

11 THE COURT: I guess I always fall back on the
12 question of people who are similarly situated and I don't
13 know whether or not this broad -- I mean the person, persons
14 identified -- there could be any number of people under their
15 supervision. How many would be comparable to Fenner?

16 MS. LOVINGER: Your Honor, this is Blythe Lovinger.
17 I don't know exactly how many in terms of a number but the
18 issue here is that both Fenner and Livingston were runner
19 reporters and there are a number of runner reporters but they
20 all have different levels of experience and expertise. They
21 may be assigned to different areas on a regular basis. So
22 it's kind of difficult to say who is their comparator but
23 even going more than -- one step further, looking at the
24 warnings or the evaluations won't be very meaningful because
25 you'd have to basically, and I think we put this in our

1 letter, look at the underlying facts and work product and
2 that would be impossible to do because with respect to the
3 facts that was pretty much require conducting a mini trial
4 and with respect to the work product an issue in this case is
5 that the Post doesn't save early drafts of articles and
6 stories that are written on a regular basis because there are
7 so many stories every day that that would be impossible.

8 Looking at an evaluation it all would just appear
9 very subjective and you'd really have to evaluate the work
10 product. So I don't know how that would really help the
11 plaintiffs in this instance to see what kind of numerical
12 rating someone was given or a couple of lines what may have
13 been written in a review.

14 THE COURT: I understand. You can certainly argue
15 about that to the judge and admissibility and whatever but as
16 far as discovery is concerned to some extent all evaluations
17 are subjective. On the other hand, if you had evaluations
18 and all the women's evaluations were lower than the men's
19 evaluations even if you didn't have their work product to say
20 okay, here's why the women were rated lower that would be
21 discoverable information. As to whether or not the parties
22 could run with it, they could point out the uniqueness of it
23 or the differences in assignments or a whole host of other
24 things but I don't think that means that the information
25 concerning the evaluations is not discoverable.

1 MS. LOVINGER: I understand your point, Your Honor.
2 In terms of number of reporters, there may be between 60 and
3 100 reporters reporting ultimately to Michelle Bahill and Dan
4 Greenfield on the city or metro desk.

5 THE COURT: Are these numerical performances
6 something that's -- is it like computerized so that, for
7 example -- again, this would be like if you went to a school
8 where they give you a grade but then they also give you an
9 opportunity to comment. You could pin out the grade and you
10 can see what they are and they may show a pattern; they may
11 not show a pattern. Is this something that, for example, for
12 these 50 people would it be a simple matter of printing out
13 what their numerical performance ratings were?

14 MR. DATOO: Your Honor, it's my understanding based
15 on the evaluations I've seen of my client -- these are two-
16 page documents and if there are 100 people we're talking
17 about maybe 400 pieces of paper here. I don't think the
18 evaluations were -- it's my understanding this is a new
19 thing, these evaluations. They were only around for a couple
20 of years.

21 THE COURT: But the answer to my question is what?

22 MS. LOVINGER: Your Honor, I believe the answer to
23 your question is no, they are not computerized.

24 THE COURT: So you couldn't spit out the numbers.
25 You'd have to do the hard copy anyway.

1 MS. LOVINGER: Correct.

2 THE COURT: Is Mr. Dato correct in terms of the
3 number of evaluations and piece of paper we're talking about?

4 MS. LOVINGER: I don't think there are two pages but
5 I think it's accurate or fair to say that they're less than
6 five pages.

7 THE COURT: Per individual?

8 MS. LOVINGER: Per individual.

9 THE COURT: Is that -- the request says 2007 to the
10 present. Is that five pages per year?

11 MS. LOVINGER: I believe each evaluation would be
12 five pages -- would be somewhere between three and five pages
13 long.

14 THE COURT: Does it have a summary page?

15 MS. LOVINGER: I don't know that there's something
16 that says summary page. There may be a page with the overall
17 numerical rating. There are a few pages with shorter
18 questions and a summary answer and then there's a numerical
19 rating.

20 THE COURT: Well, the short answer is that to the
21 extent that the plaintiffs have contended that they're
22 getting unfairly low performance ratings while you may have
23 arguments about subjectivity and individuality this really
24 goes to a specific claim that's made in the complaint by the
25 plaintiffs.

1 MS. LOVINGER: I also note that Mr. Fenner was only
2 employed with the Post for approximately two years and
3 performance evaluations were only given once a year.

4 THE COURT: So what years would that mean that you'd
5 have to produce? Again, let me back up and say that this
6 certainly seems relevant under Rule 26. So the question is
7 whether or not it is burdensome to produce. If it's in files
8 and even if it's 50 people and it's five pages or ten pages
9 that's 500 pages. That's a ream of paper. That's not an
10 overly burdensome --

11 MS. LOVINGER: I think the number of pages is not
12 what's at issue that we're not -- we're not saying that --
13 we're not arguing that the number of pages required to be
14 produced is too voluminous. It's just that all different --
15 there are different supervisors evaluating the reporters on
16 the city desk. So the people who evaluated John Smith are
17 not the same people necessarily who evaluated Austin Fenner
18 or Kim Livingston but Mr. Datto is correct when he says that
19 the performance evaluations -- I'm sure he knows this from
20 his client Ms. Livingston who's been at the Post for quite
21 some time, but the performance evaluations are a relatively
22 new procedure for the Post. So they're not very detailed or
23 lengthy and he's right in that. I think they were just
24 implemented in recent years.

25 THE COURT: That means that Mr. Datto has some work

1 to do before he can use them in a trial but as for discovery
2 they're discoverable. If some of them are done by different
3 supervisors that may mean that one has to do some sorting to
4 see if there's any pattern based upon supervisors or
5 otherwise but under Rule 26 it seems to me they've made out a
6 prima facie showing that to the extent that they claim that
7 the ratings are skewed you've got to see the ratings.

8 MS. LOVINGER: Right. I understand what you're
9 saying, Your Honor. One of our points was that plaintiff
10 has -- plaintiffs have not limited their request to
11 individuals who are similarly situated to plaintiff and
12 rather they're seeking evaluations for everyone who worked on
13 the desk and a lot of people who worked on the desk have
14 different positions. They've performed different job
15 functions and again they have different levels of experience
16 and tenure with the Post. So it really is or will be in many
17 instances comparing apples to oranges.

18 THE COURT: Well, I agree actually -- I agree with
19 you that it should be similarly situated. I'm just not so
20 sure that we can parse it ahead of time so that we can make
21 an appropriate distinction about who should be the
22 appropriate comparators. I understand that sometimes it just
23 takes more effort to try to figure out how to produce
24 dissimilarly situated because you can spend time arguing over
25 whether or not they're similarly situated. The fact that

1 people have different experience -- for example, people with
2 the same amount of experience in a slightly different job or
3 location may be more comparable than somebody who's in the
4 same location but with a different level of experience.

5 I can't answer that question based upon what
6 information is in front of me and it seems to me that we're
7 not dealing with something where it makes sense to try to
8 have you two argue over who's comparable because I'm not even
9 sure even if you briefed it I could answer that question. If
10 Mr. Dato and the plaintiffs [sic] want to show that they're
11 similar they ultimately have to show what makes them similar.

12 MS. LOVINGER: Right. But perhaps because there's
13 so many different job categories on the city desk or -- by
14 the way, it's referred to as either the city desk or the
15 metro desk in various documents but we're talking about the
16 same desk. But there were editors, runners, rewrites, copy
17 editors, junior personnel. Perhaps Mr. Dato and I can talk
18 offline and discuss who or which folks had the most similar
19 job to Livingston.

20 THE COURT: I have no quarrel with that if you two
21 can agree. All I'm saying though is that in the best case
22 scenario it's easier to determine that ahead of time and
23 [inaudible] off. If on the other hand you two are going to
24 have to spend time and argue with me and with each other it
25 might make more sense to -- you might not get down to a total

1 agreement. If you can eliminate half the people that would
2 be great.

3 MS. LOVINGER: Right. So, Shaffin, would you like
4 to speak either after this call or tomorrow?

5 MR. DATOO: That's fine.

6 THE COURT: Good.

7 MS. LOVINGER: Thank you, Your Honor.

8 THE COURT: Wait a minute. There's one other one.
9 A list of reporters of -- employees who worked as reporters
10 at the Post between '97 and the present.

11 MR. DATOO: I think that mirrors the other request
12 we made in Guzman regarding the [inaudible]. Initially I
13 agreed to narrow my request.

14 THE COURT: And ask the question you really want the
15 answer to.

16 MR. DATOO: Correct.

17 THE COURT: Should I assume that with respect to the
18 defendant's complaints about the plaintiffs you had a similar
19 conversation in Fenner?

20 MR. DATOO: Yes, Your Honor.

21 THE COURT: And that you confessed error and you're
22 working on it?

23 MR. DATOO: I don't know about error, Your Honor,
24 but we are -- we are going to be supplementing our
25 production.

1 MS. LOVINGER: Yes, Your Honor. There is one
2 outstanding -- there was one request Mr. Dattoo was unsure
3 whether or not he would be supplementing a section and that
4 was with respect to our request for complaints filed by
5 plaintiffs against prior employees, and that one we've said
6 we would discuss. I don't know if you have an answer at this
7 point.

8 MR. DATOO: We -- I can tell you now we withdraw our
9 objection and we will respond to that request.

10 MS. LOVINGER: Thank you. So we have no outstanding
11 issues on our end.

12 THE COURT: We're getting along so well.

13 We'll be adjourned. I know it might take a
14 little -- a day or two to sort this out and you'll be talking
15 also but if you have any issues that still remain I know you
16 know how to contact my law clerk.

17 MS. LOVINGER: Yes, we do. Thank you very much,
18 Your Honor, for your time.

19 THE COURT: We're adjourned.

20 MR. DATOO: Thank you, Your Honor.

21 MS. LOVINGER: Thank you.

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1 I certify that the foregoing is a court transcript from
2 an electronic sound recording of the proceedings in the
3 above-entitled matter.

4
5 _____
6 Shari Riemer

7 Dated: July 18, 2011
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